

## SB 39 – Patent Troll Legislation

Montana Department of Justice – Consumer Protection

### The Scope of the “Patent Troll” Problem

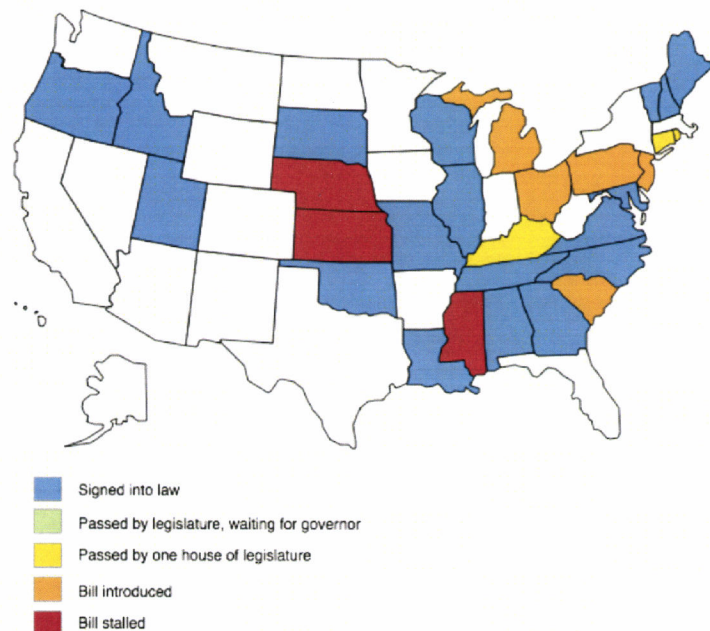
For the last several years, certain entities referred to as “patent trolls,” have been filing frivolous patent litigation asserting dubious-quality business method patents against legitimate businesses, including community banks, trucking companies, small manufacturers and other small businesses in Montana and around the nation. These “patent trolls” assert these claims through vaguely worded demand letters or intentionally vague complaints in hopes of a quick settlement. Typically, the “patent troll” sends a demand letter demanding that the business pay them a licensing or sub-licensing fee for the use of technology on which they claim to have a patent. Small businesses are especially susceptible to these tactics based on their lack of legal resources to properly dispute these claims. Often they feel pressure to settle.

Although some of these suits may involve legitimate patent assertion claims, a recent study estimated the nationwide litigation and non-litigation costs associated with litigation brought by patent assertion entities to be \$29 billion for just one year.

### Addressing the Problem Nationally and State-to-State

The issue of patent trolls is one that has received the attention of the highest office in the land - President Obama mentioned the need for national legislation addressing this problem in his State of the Union speech. Congress has attempted to pass legislation addressing the issue. In 2014, legislation passed out of the U.S. House, but died in the U.S. Senate.

Attorneys general around the country have been addressing the problem of patent trolling at the state level due to their role as consumer protection watchdogs. Led by Vermont, several attorneys general have successfully advocated for changes in state law in the past four years. To date, at least 18 states have passed legislation clamping down on the practice of patent trolling, and at least 11 other states are considering similar legislation.



### Senate Bill 39

Senate Bill 39 (Smith – Billings) prohibits “bad faith assertions of patent infringements,” by setting minimum standards for demand letters for patent infringement assertions, to provide enforcement and damages against those perpetrating such bad faith assertions. Senate Bill 39 would enhance the ability of the Attorney General and legitimate businesses in Montana to fight meritless patent infringement assertions by providing some tools to help stop this abuse, while in no way inhibiting legitimate patent infringement assertions. At the very least, Senate Bill 39 should help to force “patent trolls” to alter their typical business model and remove some of the financial incentive to assert such dubious-quality patent infringement assertions while in no way inhibiting legitimate patent infringement assertions or healthy innovation and investment that is valuable to Montana’s economy.